

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Jonathan Leite

v.

Case No. 15-cv-280-PB

Matthew Goulet, et al.

O R D E R

Plaintiff's motion to amend (doc. no. 53) the amended complaint (doc. no. 4) seeks to add a new set of Eighth Amendment claims against five supervisory officials either formerly or currently employed by the New Hampshire Department of Corrections ("NHDOC"). He alleges that the proposed defendants were deliberately indifferent to the generalized risk of inmate violence occurring inside of cells to which he fell victim. Specifically, he alleges that the defendants failed to conduct formal reviews of violent incidents and adequately address certain shortcomings in prison security policies. Leite argues that both alleged failures served to facilitate the assault he suffered because the policy lapses resulted in infrequent, direct supervision of the interior of cells, allowing inmates like Leite to be assaulted without detection. Because *respondeat superior* is not an available theory of liability under § 1983, these supervisory officials can only be liable for their own acts or omissions. See Aponte Matos v.

Toledo Davila, 135 F.3d 182, 192 (1st Cir. 2006). Thus, in the absence of direct participation in the alleged constitutional harm, supervisors can only be liable when "(1) there is subordinate liability, and (2) the supervisor's action or inaction was 'affirmatively linked' to the constitutional violation caused by the subordinate." Id. (quotes and cites omitted). Here, Leite's proposed claims rest on NHDOC's cellblock supervision and incident investigation policies. Because I granted summary judgment with respect to Leite's claims against subordinate officials acting pursuant to those policies, there can be no supervisory liability. Leite's motion to amend (doc. no. 53) is therefore denied as futile.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

June 20, 2018

cc: Lynmarie C. Cusack, Esq.
Megan E. Douglas, Esq.
Francis Charles Fredericks, Esq.
Benjamin T. King, Esq.